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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

A155369

v.

PATRICK SHANE SCHUETZ,

**(Mendocino County Superior
Court No. SCUJ-CRCR-16-
88372-1)**

Defendant and Appellant.

_____/

Patrick Shane Schuetz pleaded no contest to felony vandalism (Pen. Code, § 594, subd. (b)(1)),¹ in exchange for which special allegations of two prior strike convictions were dismissed. The court placed Schuetz on three years of probation. A year later, based on repeated violations of probation conditions, the court terminated Schuetz's probation and imposed a sentence of two years in prison with a credit of 385 days. Schuetz appeals. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On November 27, 2016, a CHP officer received a telephone call reporting vandalism in progress under a highway overpass in Mendocino County, California. The officer observed Schuetz moving wires and approached him. Schuetz was cooperative. Schuetz stated "he was helping out by removing the fence." The officer told Schuetz the

¹ All undesignated statutory references are to the Penal Code. Although appellant was initially charged as Patrick Shane Taylor, his true name is Patrick Shane Schuetz.

fence belonged there, but Schuetz felt it did not. The officer did not find any tools suitable for fence removal, but Schuetz told the officer he took down the fence. A Caltrans representative arrived, who estimated the damage to the fence would cost approximately \$1,200 to repair. The officer arrested Schuetz. Later, Schuetz told his probation officer he was not taking down the fence when arrested; instead, he claimed he was trying “to tighten it.”

On December 12, 2016, Schuetz was charged with one count of felony vandalism (§ 594, subd. (b)(1)). Schuetz pleaded not guilty. After a preliminary hearing, the court held Schuetz to answer to the charge. On February 14, 2017, the People filed an information charging Schuetz with one count of felony vandalism (§ 594, subd. (b)(1)), and alleging two prior strike convictions.

On June 14, 2017, Schuetz withdrew his plea of not guilty, and pleaded no contest to felony vandalism in exchange for dismissal of the prior strike allegations. The court suspended imposition of sentence and placed Schuetz on three years of probation. Based on a stipulation regarding restitution to Caltrans in the amount of \$1,169.78, the court ordered restitution in this amount.

On September 22, 2017, the probation officer filed a petition alleging Schuetz violated some terms of his probation, including by failing to enroll in a substance abuse treatment program, and Schuetz tested positive for methamphetamine use. Schuetz admitted to the probation violations. The court committed Schuetz to 60 days in county jail and reinstated probation.

On November 30, 2017, the probation officer filed a second petition alleging Schuetz violated probation conditions, including by failing to submit a urine sample for chemical testing, and Schuetz verbally admitted to methamphetamine use. At a hearing, Schuetz admitted he violated the terms of his probation. The court committed Schuetz to another 60 days in jail, with credit for three days served, reinstated probation, and ordered Schuetz to complete a six-month residential treatment program.

On January 25, 2018, the probation officer filed a third petition alleging Schuetz violated probation conditions, including by failing to enroll in a residential treatment

program, and Schuetz tested positive for methamphetamine use. The court revoked probation and set a hearing. At the hearing, Schuetz's probation officer testified. The court noted Schuetz was attempting to find a residential treatment program. The court found it unrealistic to expect Schuetz would enroll in a residential treatment program within the time frame prior to the third petition being filed. The probation department recommended that probation be permanently revoked, but the court determined Schuetz deserved "one final opportunity to show that he can succeed on probation with appropriate help." The court ordered Schuetz to serve 180 days in jail with credit for 22 days served and reinstated probation.

On May 11, 2018, the probation officer filed a fourth petition alleging Schuetz violated probation conditions, including by failing to enroll in a residential treatment program. Schuetz admitted he failed to do so, and he also admitted he failed to maintain office appointments with his probation officer. The court noted it was "mitigating to learn that Mr. Schuetz has applied and been wait listed for three residential treatment programs." But the court found it troubling that Schuetz "hasn't been able to accomplish the basics of staying in phone contact with his probation officer." The court indicated it was prepared to sentence Schuetz to the midterm given the nature of his offense, but the court needed more information regarding Schuetz's credits. At the end of the hearing, Schuetz stated the "fence was already on the ground and I asked [my attorney] to file my appeal and he never did[.]" His attorney responded, "[w]e can't revisit this now."

On July 17, 2018, the court terminated probation and sentenced Schuetz to two years in prison with credit for time served of 385 days. In addition, the court assessed various fines, including victim restitution to Caltrans in the amount of \$1,169.78. Schuetz appeals.

DISCUSSION

Schuetz's appointed counsel filed a *Wende* brief, asking this court to review the record to determine whether there are any arguable appellate issues. (*People v. Wende* (1979) 25 Cal.3d 436.) His appointed counsel informed Schuetz he had the right to file a supplemental brief on his own behalf. Schuetz did not do so.

In his notice of appeal and request for a certificate of probable cause, Schuetz claimed the actual cost of the fence is less than \$400, and he denies he tore it down, claiming the fence was already on the ground when he rolled it up. However, Schuetz pleaded no contest to the charge of vandalism and his appeal is based on the sentence or other matters occurring after the plea that do not affect the plea's validity. (Cal. Rules of Court, rule 8.304(b)(5).) We have reviewed the record pursuant to *Wende* and find no arguable appellate issue.

DISPOSITION

The judgment is affirmed.

Jones, P.J.

We concur:

Simons, J.

Burns, J.

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